

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/086,821 05/29/98 LARA

M ATV-004

021323

TM02/0927

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON MA 02110

EXAMINER

SALAD, A

ART UNIT	PAPER NUMBER
----------	--------------

2153

DATE MAILED:

09/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/086,821	Applicant(s) Lara et al
Examiner Abdullahi Salad	Art Unit 2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 2, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1, 6-16, 20, and 25-33 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 6-16, 20, and 25-33 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

Art Unit: 2153

Response to Amendment

1. The Amendment filed on 07/02/2001 has been entered and made of record.
2. Applicant's arguments with respect to claims 1, 6-16, 20, 25, and 26-33 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 6-16, 20, 25, and 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf U.S. Patent No. 6,185,601.

As per claim 1, 15 and 20, Wolf discloses a system for distributing client requests among two or more web servers, comprising:

monitoring the web servers to determine if a predetermined condition (load metrics) exist at one or more of the web servers (see the abstract, and col. 2, lines 34-62); and if the predetermined condition does exist at least one of the servers, redirecting by that server at least one client request from that server to another one of the servers (see the abstract, and col. 2, lines 34-62).

Art Unit: 2153

Wolf et al does not explicitly disclose the utilizing web servers:

Nonetheless, the utilization of web servers is obvious if it is not inherent. Furthermore, Wolf teaches, the network 108 may include any network type, including, but not limited to, a packet switch local area network (LAN) such as Ethernet, or a circuit switched wide area network, such as the public switch telephone network (PSTN), and obviously including Internet. Therefore, given the teachings of Wolf it would have been obvious to one having ordinary skill in the art to *utilize web* modify Wolf by using web servers, because the of web servers is standard.

In considering claims 6-8, 14, 28, 30, 32 and 33, Wolf is silent the monitored step comprising:

CPU utilization, memory utilization, request queue delay, and queue request length, failure. Nonetheless, it is well known in the art to monitor the load by monitoring any of the following predetermined conditions:

CPU utilization, memory utilization, request queue delay, and queue request length, and failure. Therefore, it would have been obvious to one having ordinary skill in the art to modify Wolf I, by employing using any of (or combination there of) the statistical parameters such as CPU utilization, memory utilization, request queue delay and queue request length to determine the productivity of the system.

In considering claims 9-13, and 16 the redirecting step comprising redirecting only if the request is for one predetermined set of content, list of content is obvious to Wolf's system.

Art Unit: 2153

In considering claim 25, Wolf discloses a system, wherein the step of redirecting is initiated by an agent running on the host , wherein the agent instructs the server interface to cause the server to redirect the request (see col. 5, lines 39-61).

Claims 26, 27, 29, and 31 have similar scope as claims 1, 15 and 20 and are rejected under same rationale .

CONCLUSION

4. The prior art made of record and relied upon is considered pertinent to the applicant's disclosure.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Abdullahi E. Salad** whose telephone number is **(703) 308-8441**. The examiner can normally be reached on **Monday to Friday from 8:30AM to 5:00PM**. If attempts to reach the examiner by telephone are unsuccessfull, the examiner's supervisor, **Glen Burgess**, can be reached at **(703)305-4792**.Any inquiry of a generel nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703)305-3900**.

As

09/24/2001



GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100